CA 2228/2000 Division Bench (Criminal) (2)

CF0000064663

High Court of Madhya Pradesh
JABALPUR.
14 AUG 2000
Reg. No. 131
Recept Clerk
High Court, Jabalpur

89(Jail)C.J.P.R./9-94

APPEAL OF PRISONER

No. ...ST.No.-174/99... Name - मुकेश उर्फ समारसिंह

Father's name - हरवाद सिंह गोंड

Residence - - - 302 मा.दु.वि. - - - - - - Age - २१ वर्ष

Sentenced to - आजीवन कारावास - - - on - २१/१/२००० - -

Under Section - - - - - - - - - - - - - - - - by - चतुर्थ अपर सत्र न्यायाधीश पेन्ड्रारोड बिलासपुर (म.प्र.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement मांगने की दिनांक
2. Date on which copy received- - - 29/7/2000 - - - - - -
3. Date on which Appeal sent- - - - 3/8/2000 - - - - - - -
4. Whether the prisoner wishes to be represented or not - - - - - - पिण

No. - - - ST.No.-174/99 - Name मुकेश उर्फ समारसिंह गो० हरवाद सिंह

Confined in - - केन्द्रीय - - - - - Jail- बिलासपुर (मध्यप्रदेश)

No. - - - - - - - - - - - 34 - - Dated - - - - 3/8/2000 199 - - - -

Forwarded to the द्वितीय अपर सत्र न्यायाधीश मध्यप्रदेश अनारपुर

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
Jail

Date of receipt in - - - - - - - - - - - - Office -

Date of receipt of record to accompany the -

Memo of Appeal to the Appellate Court- -

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मामला क्रमांक ..CRA:2228..... **सन्** 200○

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH :
HON'BLE SHRI L.C.BHADOO &
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

23.02.2007

Mr. R.K. Jain, learned counsel for the appellant.
Mr. Akhil Mishra, learned Panel Lawyer for the State.

Arguments heard.

Oral judgment dictated on dais.

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 21.1.2000 passed by Fourth Additional Sessions Judge, Bilaspur in Sessions Trial No. 174/1999 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

2. Case of the prosecution, in brief, is that on 13.4.1999 at about 8.00 a.m. deceased Pyarelal complained to PW-4 Balbir Singh that accused Gudda @ Samar Singh has damaged his house. Thereafter, he convened Panchayat of the villagers in which the deceased as also the accused, PW-3 Ratiram, PW-5 Vishal and other villagers were present, in that Panchayat deceased Pyarelal requested the Panchayat to settle their dispute. When the accused was asked as to why he damaged the house of Pyarelal, he replied in anger that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Pyarelal has sold his *Semar* and buffalo and did not give him the money, on which Pyrelal said that partition has already been effected, it is his house, why the house was damaged. Thereupon, Panchayat persuaded them not to quarrel, they would ~~allow~~ give them their share. When Gudda started leaving the Panchayat, he was carrying axe in his hand and as soon as he reached near Pyarelal, he attacked Pyrelal with axe on his neck, as a result of which he sustained fatal injury on the neck, large vessel was cut and he died spontaneously. The matter was reported by PW-3 Balbir Singh in the Police Station – Gourela on which First Information Report (Ex.P/11) was registered. Merg intimation (Ex.P/10) was registered. Station House Officer Shri M.P. Dubey (PW-8) left for the scene of occurrence and after giving notice to the Panchas, he prepared the inquest (Ex.P/5) of the dead body of Pyarelal. The dead body was sent for postmortem examination to Primary Health Center, Gourela where Dr. Alok Saxena (PW-2) conduced postmortem, prepared the postmortem report (Ex.P/3) and opined that cause of death was hemorrhage and shock as a result of neck injury.

3. After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Pendra Road, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. Prosecution in order to establish the charge against the accused/appellant examined eight witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

5. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused as aforementioned.

6. We have heard Mr. R.K. Jain, learned counsel appearing on behalf of accused/appellant and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent.

7. Mr. Jain has not disputed the homicidal death of Pyarelal. Moreover, PW-3 Ratiram has categorically stated that accused attacked deceased Pyarelal with axe on his neck, as a result of which he sustained neck injury and died spontaneously. The above evidence is further corroborated by the medical evidence of Dr. Alok Saxena (PW-2) who conducted postmortem on the body of deceased Pyarelal and stated that there was a cut injury in the size of 3 inch x 1 c.m. on the right side of the neck and vessels were also cut. He opined that cause of death was hemorrhage and shock and the injuries were antemortem in nature. In view of the above evidence, it is established that death of Pyarelal was homicidal in nature.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. As far as involvement of the accused/appellant in crime in question is concerned, PW-3 Ratiram, who is an independent witness, has categorically stated that on the fateful day deceased Pyarelal came to him and requested him to settle the dispute between him and his nephew, on which Panchayat was convened and in that Panchayat the accused all of a sudden attacked deceased Pyarelal with axe on his neck, as a result of which vessels were cut and Pyarelal died on the spot. In the cross-examination of this witness the defence has not been able to elicit any circumstance which discredits the evidence of this witness. The evidence of PW-3 Ratiram further stands corroborated by the medical evidence given by Dr. Alok Saxena (PW-2) who has stated that he conducted postmortem on the body of deceased Pyarelal and noticed a cut injury on the right side of neck of Pyarela and found that the large vessel was cut. Moreover, the doctor has stated that the weapon of offence axe was sent to him for examination and on examination he reached to the conclusion that the injury present on the neck of the deceased could be caused by the axe in question.

9. In view of above, we are of the considered opinion that the trial Court has not committed any illegality or infirmity in convicting the accused/appellant for commission of murder of Pyarelal under Section 302 of the IPC and sentencing him to undergo imprisonment for life.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10. Mr. Jain, learned counsel for the accused/appellant submitted that looking to the nature of crime, the manner in which it was committed ~~when~~ the deceased was uncle of the accused/appellant, there was no intention on the part of the accused to cause death of his uncle i.e. deceased Pyarelal, therefore, the offence against him does not travel beyond Section 304-II of the IPC.

11. On the other hand, Mr. Mishra, learned counsel for the State/respondent supported the impugned judgment of the trial Court.

12. Having heard learned counsel for the parties, we have perused the material available on record and we are of the considered opinion that the argument advanced by learned counsel for the accused/appellant is without substance for the reason that looking to the manner in which the accused attacked the deceased with a deadly weapon i.e. axe on his neck as a result of which large vessel was cut, there was profuse bleeding and on account of shock and hemorrhage Pyarelal died on the spot, the intention of the accused to cause death of Pyarelal is writ large.

13. In the result, the appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge